



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-C-D-A-

DATE: DEC. 14, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR
ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR
REMOVAL

The Applicant, a native and citizen of the Dominican Republic, seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion.

The Applicant was found inadmissible pursuant to section 212(a)(9)(C)(i) of the Immigration and Nationality Act, 8 U.S.C § 1182(a)(9)(C)(i), for being unlawfully present after previous immigration violations. The Applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii) in order to reside in the United States with his U.S citizen spouse.

In a decision dated October 20, 2014, the Director found that the Applicant did not meet the requirements for consent to reapply because 10 years had not elapsed since the date of his last departure. The Form I-212 was denied accordingly.

On appeal the Applicant asserts that he is not inadmissible pursuant to section 212(a)(9)(C)(i) of the Act. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act states in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters

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or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the Applicant entered the United States without inspection near [REDACTED] Puerto Rico, in December 1989, and departed on April 14, 1995 pursuant to a voluntary departure order. The Applicant subsequently re-entered the United States without inspection in July 2004, remaining until December 31, 2012. Based on this information the Director found the Applicant inadmissible under section 212(a)(9)(C)(i) of the Act.

Any unlawful presence accrued prior to April 1, 1997, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), or any unlawful entry or attempted reentry into the United States prior to April 1, 1997, does not trigger inadmissibility under section 212(a)(9)(C)(i)(I) of the Act.¹ Although the record establishes that the Applicant entered the United States without inspection in December 1989, and again in July 2004, his July 2004 entry without inspection did not trigger inadmissibility under section 212(a)(9)(C)(i)(I) because his prior period of unlawful presence occurred before April 1, 1997. As such the Applicant is not inadmissible under 212(a)(9)(C)(i)(I) of the Act.

In addition, the record establishes that the Applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act because he was never ordered removed from the United States. The record shows that December 4, 1994, the Applicant was granted a period of voluntary departure by the immigration judge until March 1, 1995. The record further shows that on March 16, 1995, the District Director/Chief Patrol Agent in [REDACTED] Puerto Rico, granted the Applicant an extension of the time during which he was to depart voluntarily from the United States, until April 16, 1995. The Applicant then departed the United States on April 14, 1995. As the record establishes that the Applicant departed within the period of voluntary departure he is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

¹ Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, USCIS, HQDOMO 70/21.1, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Section 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act, Revision to and Re-designation of Adjudicator's Field Manual (AFM) Chapter 30.1(d) as Chapter 40.9 (AFM Update AD 08-03) 28* (May 6, 2009), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AF M.PDF.

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As the record establishes that the Applicant is not inadmissible under 212(a)(9)(C)(i) of the Act, the Form I-212 is moot. The decision of the Director, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion.

Cite as *Matter of L-C-D-A-*, ID# 12109 (AAO Dec. 14, 2015)